

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants: THOMPSON, Wanda Green, et al.
Serial Number: 10/018,070
Atty. Dkt: RCA 89470
Filing Date: October 25, 2001
For: ADVERTISEMENT SELECTION BASED ON USER
ACTION IN AN ELECTRONIC PROGRAM GUIDE
Art Unit: 2426
Examiner: PENG, Fred H.

APPEAL BRIEF

**Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450**

Sir:

In response to the final Office Action dated October 20, 2009, and further to the Notice of Appeal filed on January 7, 2010, Appellants hereby submit an Appeal Brief in accordance with 37 C.F.R. §41.37 for the above-referenced application.

I. Real Party in Interest

The real party in interest is Thomson Licensing LLC.

II. Related Appeals and Interferences

There are no prior or pending appeals, interferences, or judicial proceedings known to Appellants, the Appellants' legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. Status of Claims

1-20 are cancelled. Claims 21-34 are pending in this application, and are rejected. The rejection of claims 21-34 is being appealed.

IV. Status of Amendments

No amendment subsequent to the final rejection of October 20, 2009 has been filed.

V. Summary of Claimed Subject Matter

Independent claim 21 defines a method for providing an advertisement dynamically along with an electronic program guide having information of programs in response to movement of a highlighted element in the electronic program guide (see, for example, page 2, lines 1-2 and page 7, lines 7-10 and FIGS. 2-3), the highlighted element being movable within the electronic program guide in response to a user key entry made via a user control device of a video apparatus (see, for example, page 7, lines 29-31), the method comprising steps of:

receiving a plurality of advertisements, each one of the received advertisements being associated with at least one program in the electronic program guide and including a respective descriptor for identifying a program (see, for example, page 2, lines 3-4 and page 7, lines 3-6);

storing the received advertisements (see, for example, page 2, line 5);

monitoring the movement of the highlighted element in the electronic program guide (see, for example, page 2, line 6 and page 7, lines 29-31);

determining a next program in the electronic program guide to be reached by the highlighted element based on the monitoring step (see, for example, page 7, line 31 to page 8, line 7); and

displaying one of the stored advertisements representing an advertisement for the determined next program before the determined next program has been reached by the highlighted element (see, for example, page 6, lines 26-31 and page 7, lines 7-10).

Independent claim 27 defines a video apparatus (see, for example, element 101 of FIG. 1) for providing an advertisement dynamically along with an electronic program guide having information of programs in response to movement of a highlighted element in the electronic program guide (see, for example, page 2, lines 1-2 and page 7, lines 7-10 and FIGS. 2-3), the highlighted element being movable within the electronic program guide in response to a user key entry made via a user control device of the video apparatus (see, for example, page 7, lines 29-31), the video apparatus being operative to enable performance of steps comprising:

receiving a plurality of advertisements, each one of the received advertisements being associated with at least one program in the electronic program guide and including a respective descriptor for identifying a program (see, for example, page 2, lines 3-4 and page 7, lines 3-6);

storing the received advertisements (see, for example, page 2, line 5);

monitoring the movement of the highlighted element in the electronic program guide (see, for example, page 2, line 6 and page 7, lines 29-31);

determining a next program in the electronic program guide to be reached by the highlighted element based on the monitoring step (see, for example, page 7, line 31 to page 8, line 7); and

displaying one of the stored advertisements representing an advertisement for the determined next program before the determined next program has been reached by the highlighted element (see, for example, page 6, lines 26-31 and page 7, lines 7-10).

VI. Ground of Rejection to be Reviewed on Appeal

The rejection of claims 21-34 under 35 U.S.C. §102(e) based on U.S. Patent Publication No. 2003/0208756 by Macrae et al. (hereinafter, "Macrae") is presented for review in this appeal.

VII. Argument

The rejection of claims 21-34 under 35 U.S.C. §102(e) based on Macrae should be reversed since Macrae fails to disclose or suggest each and every element of the claimed invention.

Appellants first note that independent claim 21 recites:

"A method for providing an advertisement dynamically along with an electronic program guide having information of programs in response to movement of a highlighted element in the electronic program guide, the highlighted element being movable within the electronic program guide in response to a user key entry made via a user control device of a video apparatus, the method comprising steps of:

receiving a plurality of advertisements, each one of the received advertisements being associated with at least one program in the electronic program guide and including a respective descriptor for identifying a program;

storing the received advertisements;

monitoring the movement of the highlighted element in the electronic program guide;

determining a next program in the electronic program guide to be reached by the highlighted element based on the monitoring step; and

displaying one of the stored advertisements representing an advertisement for the determined next program before the determined next program has been reached by the highlighted element." (emphasis added)

As indicated above, independent claim 21 defines a method for providing an advertisement dynamically along with an electronic program guide having information of programs in response to movement of a highlighted element in the electronic program guide. Notably, the claimed method includes a combination of steps in which: (i) the movement of the highlighted element in the electronic program guide is monitored; (ii) a

next program in the electronic program guide to be reached by the highlighted element is determined based on the monitoring step; and (iii) one of the stored advertisements representing an advertisement for the determined next program is displayed before the determined next program has been reached by the highlighted element. Independent claim 27 defines the foregoing steps in a similar manner, but is drafted in "video apparatus" format as opposed to "method" format.

Macrae fails to disclose or suggest, *inter alia*, the aforementioned combination of steps, as recited by independent claims 21 and 27. On pages 2-3 of the final Office Action dated October 20, 2009, the Examiner alleges that the aforementioned claimed steps are disclosed by paragraphs [0331]-[0332] and FIGS. 7 and 8 of Macrae. Specifically, paragraphs [0331]-[0332] of Macrae state:

"[0331] In one embodiment, the advertisements in the library are assigned to themes; the history of use of an on-screen theme menu or program guide is recorded; and the history is analyzed by the EPG microprocessor to decide which advertisement to display.

[0332] For example, a particular advertisement for automobiles might be assigned to a sports event theme. In a simple implementation, this automobile advertisement would be selected for display, if the users of the particular EPG selected sports as a theme more frequently than any other theme during a prescribed period of time. FIG. 7 represents the on screen display for the top level theme screen; and FIG. 8 represents the on screen display for the second-level theme screen. A theme selection could be recorded when a viewer highlights a theme in FIG. 7, such as 'Sports'. Selecting a theme brings up a screen listing, by time, channel, and title, of the programs that are consistent with the selected theme on a second-level theme screen, an example of which is shown in FIG. 8. The history of use could be recorded in a memory by overwriting the oldest data stored in the memory. If desired, a more sophisticated analysis could be used. Thus, the frequency of selection could be weighted to favor more recent selections over older selections or themes could be combined to determine which advertisement to display." (emphasis added)

Appellants submit that the foregoing teachings of Macrae fail to disclose or suggest the claimed invention. As indicated above, the cited passages of Macrae

disclose an embodiment in which advertisements are assigned to themes. According to the example provided, a particular advertisement for automobiles might be assigned to a sports event theme, such that this particular automobile advertisement is selected for display if EPG users selected sports as a theme more frequently than any other theme during a prescribed period of time. Also according to the example, the sports event theme may be selected by a viewer via the screen display of FIG. 7. Selecting a theme brings up a screen listing (i.e., by time, channel and title) of the programs that are consistent with the selected theme on a theme screen, an example of which is shown in FIG. 8. Accordingly, if the viewer selects the sports event theme via the screen display of FIG. 7, a screen listing of sports programs is displayed via a screen such as the one shown in FIG. 8. Moreover, since the particular automobile advertisement is assigned to the sports event theme, a fair reading of Macrae clearly indicates that this particular automobile advertisement is displayed while the viewer navigates the screen listing of sports programs. In other words, Macrae clearly teaches a one-to-one correspondence or assignment between a single (i.e., "particular") advertisement (e.g., for an automobile) and a single theme (e.g., sports) such that when a viewer navigates within a screen listing of programs for that theme, the single (i.e., "particular") advertisement assigned to that theme is displayed.

The aforementioned teachings of Macrae are very different from what is claimed. In particular, according to the claimed invention, the movement of a highlighted element in an electronic program guide is monitored to thereby determine a next program in the electronic program guide to be reached by the highlighted element. Then, before the determined next program is reached by the highlighted element, an advertisement representing an advertisement for the determined next program is displayed. In other words, the advertisement being displayed is **an advertisement for the ["determined next"] program itself**, and it is displayed **before** the highlighted element reaches the ["determined next"] program.

In contrast to the claimed invention, the advertisement displayed in Macrae (i.e., automobile advertisement) is **NOT an advertisement for the ["determined next"]**

program itself, but rather is an advertisement that has been assigned to the theme of programs (i.e., sports) being displayed. Moreover, Macrae nowhere discloses or suggests that an advertisement is displayed **before** programs for the advertisement's assigned theme are highlighted.

Accordingly, for at least the foregoing reasons, Appellants submit that independent claims 21 and 27 and their respective dependent claims are novel and non-obvious over Macrae, and respectfully request that the Board reverse the rejection of claims 21-34.

VIII. Claims Appendix

21. A method for providing an advertisement dynamically along with an electronic program guide having information of programs in response to movement of a highlighted element in the electronic program guide, the highlighted element being movable within the electronic program guide in response to a user key entry made via a user control device of a video apparatus, the method comprising steps of:

receiving a plurality of advertisements, each one of the received advertisements being associated with at least one program in the electronic program guide and including a respective descriptor for identifying a program;

storing the received advertisements;

monitoring the movement of the highlighted element in the electronic program guide;

determining a next program in the electronic program guide to be reached by the highlighted element based on the monitoring step; and

displaying one of the stored advertisements representing an advertisement for the determined next program before the determined next program has been reached by the highlighted element.

22. The method of claim 21, further comprising a step of identifying which of the advertisements are targeted advertisements for display during the movement of the highlighted element in the electronic program guide, wherein the displayed advertisement is one of the identified targeted advertisements.

23. The method of claim 21, wherein each of the respective descriptors comprises a channel descriptor for a respective one of the advertisements.

24. The method of claim 23, wherein the displaying step is performed in response to the channel descriptor associated with the displayed advertisement matching a channel associated with the determined next program.

25. The method of claim 23, wherein each of the respective descriptors further comprises a time descriptor.

26. The method of claim 25, wherein the displaying step is performed in response to the channel descriptor associated with the displayed advertisement matching a channel associated with the determined next program and the time descriptor associated with the displayed advertisement matching a current time.

27. A video apparatus for providing an advertisement dynamically along with an electronic program guide having information of programs in response to movement of a highlighted element in the electronic program guide, the highlighted element being movable within the electronic program guide in response to a user key entry made via a user control device of the video apparatus, the video apparatus being operative to enable performance of steps comprising:

- receiving a plurality of advertisements, each one of the received advertisements being associated with at least one program in the electronic program guide and including a respective descriptor for identifying a program;

- storing the received advertisements;

- monitoring the movement of the highlighted element in the electronic program guide;

- determining a next program in the electronic program guide to be reached by the highlighted element based on the monitoring step; and

- displaying one of the stored advertisements representing an advertisement for the determined next program before the determined next program has been reached by the highlighted element.

28. The video apparatus of claim 27, wherein the video apparatus is further operative to enable performance of a step of identifying which of the advertisements are targeted advertisements for display during the movement of the highlighted element in the electronic program guide, wherein the displayed advertisement is one of the identified targeted advertisements.

29. The video apparatus of claim 27, wherein each of the respective descriptors comprises a channel descriptor for a respective one of the advertisements.

30. The video apparatus of claim 29, wherein the displaying step is performed in response to the channel descriptor associated with the displayed advertisement matching a channel associated with the determined next program.

31. The video apparatus of claim 29, wherein each of the respective descriptors further comprises a time descriptor.

32. The video apparatus of claim 31, wherein the displaying step is performed in response to the channel descriptor associated with the displayed advertisement matching a channel associated with the determined next program and the time descriptor associated with the displayed advertisement matching a current time.

33. The method of claim 21, further comprising a step of enabling a user to view the determined next program in response to a user input responding to the displayed advertisement for the determined next program.

34. The video apparatus of claim 27, wherein the video apparatus enables a user to view the determined next program in response to a user input responding to the displayed advertisement for the determined next program.

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IX. Evidence Appendix

None.

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X. Related Proceedings Appendix

None.

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Please charge the fee for this Appeal Brief and to Deposit Account 07-0832.

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